



INTERIOR BOARD OF INDIAN APPEALS

Viola Schettler

7 IBIA 50 (04/12/1978)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF VIOLA SCHETTLER

IBIA 77-62-A

Decided April 12, 1978

Appeal from the decision of the Area Director affirming action of Acting-Superintendent allowing removal of fence and steel posts.

Affirmed.

APPEARANCES: Viola Schettler, appellant, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of the Area Director, Bureau of Indian Affairs, Aberdeen Area Office, dated July 13, 1977, affirming the decision of the Acting-Superintendent, Fort Berthold Agency, dated June 15, 1977, authorizing the removal of 2 miles of fencing and steel posts by Lynn Billadeau, from Range Unit No. 72.

It appears from an examination of the record, that the appellant was allocated grazing privileges on the Fort Berthold Indian Reservation Range Unit No. 72, effective November 1, 1976, in accordance with certain regulations promulgated by the Secretary of the Interior and referred to in Title 25 Code of Federal Regulations as section 151, et seq.

Grazing permit was previously approved by the Superintendent, Fort Berthold Agency to permittee, Duane Charging.

Pasturing authorization approved by Andrew Fisher, Superintendent, Fort Berthold Agency, January 28, 1976, effective May 1, 1976, to Duane Charging, permittee, authorized Lynn Billadeau to pasture certain of his livestock in common with those of Duane Charging.

Removable Range Improvement Record signed by permittee Duane Charging, approved by the Superintendent, Fort Berthold Agency on January 29, 1976, authorized removal of 2 miles of fence and steel posts belonging to Duane Charging.

Acting-Superintendent Morgan, by letter of June 15, 1977, authorized Lynn Billadeau to remove the 2 miles of fence and steel posts from Range Unit No. 72. Viola Schettler appealed to the Area Director, Aberdeen Area Office, who affirmed the Acting-Superintendent on July 13, 1977. An appeal was timely taken to the Commissioner of Indian Affairs, which appeal was referred to this Board for review and decision pursuant to 25 CFR 2.19(a)(2).

Appellant, Viola Schettler, alleges among other things, that the agreement allocating Unit No. 72 to her did not make reference to fencing or provide for removal of same.

She further alleges that Lynn Billadeau had no agreement with the Bureau of Indian Affairs for Unit No. 72. Moreover, appellant states, if Billadeau had an agreement for removal of fencing it was with the Indian operator from whom he was subleasing the unit prior to appellant's acquisition of the allocation.

Appellant asserts that she checked with several Bureau of Indian Affairs personnel, including Acting-Superintendent Morgan, and was assured there was nothing in the record authorizing removal of fencing and fence posts from Unit No. 72. She further asserts that it was not until 3 days after she had placed her cattle on the unit that she learned of the Acting-Superintendent's action authorizing Lynn Billadeau to remove the fence and posts. Appellant asserts that since Billadeau had no contract showing that he was the previous allocatee or that he had ever installed any fencing on Unit No. 72, the fence became part of the realty.

In essence, appellant contends that Acting-Superintendent Morgan was negligent in that he had not apprised her that certain range improvements were removable prior to her placing her cattle on the unit and if he intended to authorize removal of same prior to her receipt of the allocation.

In affirming the action of Acting-Superintendent Morgan, Area Director Harley D. Zephier, on July 13, 1977, concluded among other things, that Lynn Billadeau, had the right to pasture his livestock in common with those of Duane Charging. In addition, the record included an approved right to remove 2 miles of fence and steel posts, though signed by Duane Charging and approved by the Acting-Superintendent.

We find that the Acting-Superintendent was in compliance with 25 CFR 151.17 in authorizing the removal of the fence and posts by Lynn Billadeau. In other words, the removable range improvement record signed by Duane Charging and approved by the Superintendent on January 29, 1976, together with the authorization approved January 26, 1976, authorizing Lynn Billadeau to pasture his livestock in common with those of Duane Charging, were sufficient to sustain the action of the Acting-Superintendent.

Whether the alleged actions of the Acting-Superintendent were sufficient to constitute carelessness or negligence is something else. We find the available evidence to be conflicting and insufficient to establish negligence on the part of the Acting-Superintendent.

Assuming arguendo, the Acting-Superintendent was negligent in his alleged untimely notification to the appellant and his ultimate authorization to Lynn Billadeau to remove fence and posts on Unit No. 72, 25 CFR 151 does not provide appellant with a remedy.

Moreover, it has been consistently held that the Secretary of the Interior is not bound by the unauthorized acts of his employees. Administrative Appeal of Joe McComas, 5 IBIA 125 (June 11, 1976) 83 I.D. 227.

We agree that if the appellant suffers damages because of the negligence or careless acts of an employee of the Bureau of Indian Affairs, the burden is on the appellant to establish same in another forum.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Area Director, Aberdeen Area Office, dated July 13, 1977, affirming decision of the Acting-Superintendent dated June 15, 1977, is AFFIRMED.

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Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Chief Administrative Judge